

KEYWORD: Foreign Influence; Foreign Preference

DIGEST: Applicant is 56 years old and has worked for a federal contractor since 1981. She is a dual citizen of France and the United States. She had a valid and current French passport and exercised her French citizenship by using her French passport to travel. Applicant has some family remaining in France, but has minimal contact with most of them. The one cousin she is close to has minimal vulnerability to exploitation. Applicant's children are also dual citizens, but reside in the U.S. Applicant has mitigated the security concerns under Guideline B, foreign influence, but failed to mitigate the security concerns under Guideline C, foreign preference. Clearance is denied.

CASE NO: 02-24328.h1

DATE: 04/21/2006

DATE: April 21, 2006

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 02-24328

DECISION OF ADMINISTRATIVE JUDGE

CAROL G. RICCIARDELLO

APPEARANCES

FOR GOVERNMENT

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant is 56 years old and has worked for a federal contractor since 1981. She is a dual citizen of France and the United States. She had a valid and current French passport and exercised her French citizenship by using her French passport to travel. Applicant has some family remaining in France, but has minimal contact with most of them. The one cousin she is close to has minimal vulnerability to exploitation. Applicant's children are also dual citizens, but reside in the U.S. Applicant has mitigated the security concerns under Guideline B, foreign influence, but failed to mitigate the security concerns under Guideline C, foreign preference. Clearance is denied.

STATEMENT OF CASE

On April 16, 2004, the Defense Office of Hearings and Appeals (DOHA) issued to Applicant a Statement of Reasons (SOR) stating it was unable to find that it is clearly consistent with the national interest to grant or continue a security clearance. [\(U\)](#) The SOR, which is in essence the administrative complaint, alleges security concerns under Guideline C, foreign preference, and Guideline B, foreign influence.

In a sworn statement dated May 6, 2004, Applicant responded to the SOR allegations and admitted them all. Applicant elected to have her case decided on the written record. Department Counsel submitted the government's file of relevant material (FORM) on November 10, 2005. The FORM was mailed to Applicant on November 17, 2005, and received on November 28, 2005. Applicant was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation. Applicant did not provide additional material. The case was assigned to me on January 23, 2006.

FINDINGS OF FACT

Applicant is 56 years old, has worked for a federal contractor since 1981 and is currently employed as a project manager. There is conflicting information about whether she has held a security clearance in the past. On her security clearance application (SCA) she stated she did not have a clearance.⁽²⁾ However, in her Answer to the SOR she stated she has held a clearance for 17 years.⁽³⁾ Applicant has been married for 33 years and has two grown daughters.

Applicant was born in France and moved to the United States in 1973. She became a naturalized citizen of the United States on April 17, 1979. She remained a dual citizen of France. She has a valid U.S. passport. Every five years she renewed her French passport and her French national identity card through the French consulate.⁽⁴⁾ She last renewed her French passport on January 31, 2001 and it was to expire in January 2006. She continues to possess a French identity card.

When Applicant's children were born she registered their birth with the French consulate and requested dual citizenship for them.⁽⁵⁾ They are dual citizens of France and the United States, and reside in the U.S. Her children would be eligible for a free college education in France, as French citizens.⁽⁶⁾ Both of her children have already completed college in the U.S. Applicant claims she maintains her French citizenship and acquired French citizenship for her children for sentimental reasons and to maintain ties with her parents when they were alive.⁽⁷⁾ Applicant claims she is willing to renounce her French citizenship, but qualifies her renunciation by stating: "To renounce the French citizenship, there would have to be a good reason, I would not want to do it lightly."⁽⁸⁾ She also claimed she was willing to give up her French passport.⁽⁹⁾ Applicant provided no evidence that she has renounced her French citizenship, nor surrendered her French passport or identity card.

Applicant used her French passport, instead of her U.S. passport, in January 1996, April 1996, and May 1996, to visit her sick mother and later to attend her funeral. She returned to France using her French passport in July-August 1996 to attend to her ailing father. In February 1998, she again returned to France using her French passport to attend her father's funeral.⁽¹⁰⁾

When her parents were living, Applicant visited them yearly in France. She would exit the U.S. on her U.S. passport and use her French passport to enter France for convenience, due to shorter lines.⁽¹¹⁾ She would also use her French passport to travel to other European countries because it was easier and for identification purposes while in France.⁽¹²⁾ She continues to retain her French passport, she claims, for sentimental reasons.⁽¹³⁾

Applicant's brother and his wife are citizens and residents of France. Her only contact with them is a Christmas card every year. He is a retired French air traffic controller and receives a pension. No information was provided as to whether his pension is from a private or government entity.

Applicant has a cousin and her spouse who are citizens and residents of France. She maintains close ties to her cousin, exchanging monthly emails and Christmas cards. She considers her cousin "like a sister."⁽¹⁴⁾ Her cousin is a housewife and her husband is a surveyor. No information was provided regarding his employer. She also sends Christmas cards to her elderly aunts and cousins who are citizens and residents of France. She has no other contact with them.⁽¹⁵⁾

A savings account in France, with a balance of approximately \$100, is maintained by Applicant. She claimed she would close the account, but provided no evidence that she has done so. Applicant inherited \$20,000 when her parents died, and used the funds to pay for her daughters' college educations. All of Applicant's other financial interests are in the U.S.

POLICIES

Enclosure 2 of the Directive sets forth adjudicative guidelines to be considered in evaluating a person's eligibility to hold a security clearance. Included in the guidelines are disqualifying conditions (DC) and mitigating conditions (MC) applicable to each specific guideline. Additionally, each security clearance decision must be a fair and impartial commonsense decision based on the relevant and material facts and circumstances, the whole-person concept, along with the factors listed in the Directive. Specifically these are: (1) the nature and seriousness of the conduct and surrounding circumstances; (2) the frequency and recency of the conduct; (3) the age of the applicant; (4) the motivation of the applicant, and the extent to which the conduct was negligent, willful, voluntary, or undertaken with knowledge of the consequences; (5) the absence or presence of rehabilitation; and (6) the probability that the circumstances or conduct will continue or recur in the future. Although the presence or absence of a particular condition or factor for or against clearance is not outcome determinative, the adjudicative guidelines should be followed whenever a case can be measured against this policy guidance.

The sole purpose of a security clearance determination is to decide if it is clearly consistent with the national interest to grant or continue a security clearance for an applicant.⁽¹⁶⁾ The government has the burden of proving controverted facts.⁽¹⁷⁾ The burden of proof is something less than a preponderance of evidence.⁽¹⁸⁾ Once the government has met its burden, the burden shifts to an applicant to present evidence of refutation, extenuation, or mitigation to overcome the case against

him.⁽¹⁹⁾ Additionally, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.⁽²⁰⁾

No one has a right to a security clearance⁽²¹⁾ and "the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials."⁽²²⁾ Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such sensitive information.⁽²³⁾

The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of an applicant. (24) It is merely an indication that the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

Based upon consideration of all the evidence, I find the following adjudicative guideline most pertinent to the evaluation of the facts in this case:

Guideline C-Foreign Preference is a security concern because when an individual acts in such a way as to indicate a preference for a foreign country over the United States, then he or she may be prone to provide information or make decisions that are harmful to the interests of the United States.

Guideline B-Foreign Influence is a concern because a security risk may exist when an individual's immediate family, including cohabitants, and other persons to whom he or she may be bound by affection, influence, or obligations are not citizens of the United States or may be subject to duress. These situations could create the potential for foreign influence that could result in the compromise of classified information. Contacts with citizens of other countries or financial interest in other countries are also relevant to security determinations if they make an individual potentially vulnerable to coercion, exploitation, or pressure.

Conditions that could raise a security concern and may be disqualifying, as well as those which would mitigate security concerns, pertaining to the adjudicative guideline are set forth and discussed in the conclusions below.

CONCLUSIONS

I have carefully considered all the facts in evidence and the legal standards. The government has established a prima facie case for disqualification under Guideline C and Guideline B .

Based on all the evidence, Foreign Preference Disqualifying Condition (FP DC) E2.A3.1.2.1 (*The exercise of dual citizenship*) and FP DC E2.A3.1.2.2 (*Possession and/or use of a foreign passport*) apply. Applicant maintained her French citizenship after becoming a naturalized U.S. citizen. She retained and renewed her French passport and French identity card continuously since 1979. In addition, she used her French passport instead of her U.S. passport when gaining entry to France and when traveling in Europe. The possession and/or use of a foreign passport is an exercise of dual citizenship. A foreign preference can be shown by an applicant's exercise of the rights and privileges of foreign

citizenship for reason of personal convenience or expediency. ⁽²⁵⁾ Use of a foreign passport for personal convenience is not extenuating or mitigating. ⁽²⁶⁾ Applicant has provided no evidence that she no longer retains a French passport or identity card. Applicant maintains a savings account in France. All of the above disqualifying conditions apply.

I have considered all the mitigating conditions and especially considered Foreign Preference Mitigating Condition (FP MC) E2.A3.1.3.1 (*Dual citizenship is based solely on parents' citizenship or birth in a foreign country*); (FP MC) E2.A3.1.3.2 (*Indicators of possible foreign preference (e.g. foreign military service) occurred before obtaining United States citizenship*); and FP MC E2.A3.1.3.4 (*Individual has expressed a willingness to renounce dual citizenship*). Although Applicant's French citizenship was originally based on her parents' citizenship and her birth in France, she actively maintained it after becoming a naturalized citizen of the U.S. She intentionally and continuously obtained French passports and identity cards and used her French passport and not her U.S. passport, to gain entry to France and other European countries. As a French citizen she also registered her children to be dual citizens of France and the U.S. These were all intentional actions and showed Applicant's affirmative preference to use her French passport over her U.S. passport and gain the benefits afforded her by France. I find FP MC E2.A3.1.3.1 and FP MC E2.A3.1.3.2 do not apply. Applicant has expressed a qualified willingness to renounce her dual citizenship, and would only be willing to do so for a good reason. FP MC A3.1.3.4 does not apply.

In accordance with a memorandum issued by Assistant Secretary of Defense for Command, Control, Communication, and Intelligence, Arthur L. Money, dated August 16, 2000, (Money Memorandum), a security clearance must be denied or revoked for an Applicant with a foreign passport "unless the applicant surrenders the foreign passport." Surrender of the passport contemplates returning it to the issuing authority. Applicant provided no evidence she returned her French passport to the appropriate authority, nor is there any indication she intends to discontinue her use of her French passport or identity card. I find none of the above mitigating conditions apply.

Based on all the evidence, Foreign Influence Disqualifying Condition (FI DC) E2.A2.1.2.1 (*An immediate family member, or a person to whom the individual has close ties of affection or obligation, is a citizen of, or resident or present in, a foreign country*), and FI DC E2.A2.1.2.8 (*A substantial financial interest in a country, or in any foreign-owned or operated business that could make the individual vulnerable to foreign influence*) apply. Applicant's brother and sister-in-law are citizens and residents of France. Her cousin, whom she has close ties of affection with is also a citizen and resident of France. Applicant's children are dual citizens of the U.S. and France. Applicant maintains a savings account in France. I find FI DC E2.A2.1.2.1 and FI DC E2.A2.1.2.8 apply.

I have considered all the mitigating conditions and especially considered Foreign Influence Mitigating Condition (FI MC) E2.A2.1.3.1 (*A determination that the immediate family member(s), (spouse, father, mother, sons, daughters, brothers, sisters), cohabitant, or associate(s) in question are not agents of a foreign power or in a position to be exploited by a foreign power in a way that could force the individual to choose between loyalty to the person(s) involved and the United States*); FI MC E2.A2.1.3.3 (*Contacts and correspondence with foreign citizens are casual and infrequent*); and FI MC E2.A2.1.3.5 (*Foreign financial interests are minimal and not sufficient to affect the individual's security responsibilities*) apply. Applicant does not maintain close ties with her brother and his wife in France. A once a year Christmas card constitutes casual and infrequent contact. Although no information was provided as to the source of her brother's pension, it is likely they are not agents of a foreign power. Regarding Applicant's aunts and cousins that she sends Christmas cards to once a year, I find they are not immediate family members and her contact with them is

casual and infrequent. I find FI MC E2.A2.1.3.1 and FI MC E2.A2.1.3.3 applies to her brother, his wife, and her aunts and cousins, except as explained below. With regard to Applicant's cousin with whom she is admittedly close to I find she maintains more than casual and infrequent contact. Applicant's daughters are obvious immediate family members. I find FI MC E2.A2.1.3.3 does not apply to her cousin and her daughters.

The question that remains, however, is whether Applicant's daughters and cousin are in a position to be exploited by a foreign power in a way that could force Applicant to choose between loyalty to them vice the United States. Another consideration is whether her daughters and cousin and her husband are vulnerable to exploitation in such a way as to have Applicant act adversely to the interests of the United States. A factor to consider, while not determinative, is an analysis of the character of the foreign power and entities within the foreign country. This review is not limited to countries that are hostile to the United States. Friendly countries may have profound disagreements with the United States or have engaged in espionage against the United States especially in economic, scientific, military, and technical fields. A friendly relationship is not determinative, but it may make it less likely that a foreign government would attempt to exploit a U.S. citizen through relatives or associates in that country. Although there are terrorist activities and components in most country, France is a country with longstanding close ties with the United States. Although at times France may disagree with the United States on political issues, it does not have a history of human rights violations or exploitation of its citizens. I find because Applicant's daughters reside in the United States and are dual citizens it is very unlikely they would be in a position to be exploited. I find Applicant's relationship with her cousin and her husband in France is not the type that would be exploited. Every person with a relative in another country could pose a risk. I have balanced that probability in this case and find due to the nature of the relationship between the United States and France, that the risk does not rise to the level of potential exploitation. I find FI MC E2.A2.1.3.1 applies and Applicant has successfully mitigated the security concerns regarding her family. I find the potential vulnerability is minimal.

Applicant has some financial interests in France, however the monetary value of the interests is minimal and all of her other assets are in the U.S. I find Applicant's financial interests are minimal and insufficient to potentially affect her security responsibilities. FI MC E2.A1.3.5 applies. Applicant has mitigated the security concerns regarding foreign influence under Guideline B.

In all adjudications, the protection of our national security is the paramount concern. The objective of the security-clearance process is the fair-minded, commonsense assessment of a person's life to make an affirmative determination that the person is eligible for a security clearance. Indeed, the adjudicative process is a careful weighing of a number of variables in considering the "whole person" concept. It recognizes that we should view a person by the totality of their acts, omissions, motivations and other variables. Each case must be adjudged on its own merits, taking into consideration all relevant circumstances, and applying sound judgment, mature thinking, and careful analysis.

I considered all the evidence provided and also considered the "whole person" concept in evaluating Applicant's risk and vulnerability in protecting our national interests. I find Applicant has successfully mitigated the security concerns under Guideline B, foreign influence. I also find Applicant has failed to mitigate the security concerns raised by foreign preference considerations, under Guideline C. I am persuaded by the totality of the evidence in this case, that it is not clearly consistent with the national interest to grant Applicant a security clearance. Accordingly, Guideline B is decided for Applicant and Guideline C is decided against Applicant.

FORMAL FINDINGS

Formal Findings for or against Applicant on the allegations set forth in the SOR, as required by Section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1 Guideline C AGAINST APPLICANT

Subparagraph 1.a. Against Applicant

Subparagraph 1.b. Against Applicant

Subparagraph 1.c. Against Applicant

Subparagraph 1.d. Against Applicant

Subparagraph 1.e. Against Applicant

Subparagraph 1.f. Against Applicant

Subparagraph 1.g. Against Applicant

Paragraph 2 Guideline B FOR APPLICANT

Subparagraph 2.a. For Applicant

Subparagraph 2.b. For Applicant

Subparagraph 2.c. For Applicant

Subparagraph 2.d. For Applicant

Subparagraph 2.e. For Applicant

Subparagraph 2.f. For Applicant

Subparagraph 2.g. For Applicant

DECISION

In light of all the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant or continue a security clearance for Applicant. Clearance is denied.

Carol. G. Ricciardello

Administrative Judge

1. This action was taken under Executive Order 10865, dated February 20, 1960, as amended, and DoD Directive 5220.6, dated January 2, 1992, as amended and modified (Directive).
2. Item 4 at Question 30.
3. Item 2 at 1.
4. Item 5 at 1.
5. *Id.* at 1-2.
6. *Id.*
7. *Id.*

8. *Id.* at 3.
9. *Id.* at 4.
10. Item 2; Item 5.
11. Item 5 at 4.
12. *Id.*
13. *Id.*
14. *Id.* at 6.
15. *Id.*
16. ISCR Case No. 96-0277 at 2 (App. Bd. Jul. 11, 1997).
17. ISCR Case No. 97-0016 at 3 (App. Bd. Dec. 31, 1997); Directive, Enclosure 3, ¶ E3.1.14.
18. *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).
19. ISCR Case No. 94-1075 at 3-4 (App. Bd. Aug. 10, 1995); Directive, Enclosure 3, ¶ E3.1.15.
20. ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995); Directive, Enclosure 3, ¶ E3.1.15.
21. *Egan*, 484 U.S. at 531.
22. *Id.*
23. *Id.*; Directive, Enclosure 2, ¶ E2.2.2.
24. Executive Order 10865 § 7.
25. ISCR Case No. 02-02052 at 4 (App. Bd. Apr. 8, 2003)
26. ISCR Case. No. 99-0424, 2001 DOHA Lexis 59 at *47 (App. Bd. Feb 8, 2001)